

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 WL DOGETT, LLC, ET AL § CASE NO. 4:14-CV-00506

§ HOUSTON, TEXAS

5 VERSUS

§ THURSDAY,

§ JUNE 26, 2014

6 DOES (1-10)

§ 10:16 A.M. TO 10:26 A.M.

7 INITIAL SCHEDULING CONFERENCE

8 BEFORE THE HONORABLE STEPHEN WM. SMITH

9 UNITED STATES MAGISTRATE JUDGE

10
11 APPEARANCES:

12 FOR PLAINTIFF/DEFENDANT: SEE NEXT PAGE

13 COURT RECORDER: CAROL FELCHAK

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1 HOUSTON, TEXAS; THURSDAY, JUNE 26, 2014; 10:16 A.M.

2 THE COURT: All right. The next case is WL
3 Doggett, LLC, et al versus Does (1-10), Civil Action
4 H-14-506.

5 MR. DODSON: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. DODSON: Chris Dodson, Bracewell, for the
8 Plaintiffs.

9 THE COURT: Good morning.

10 MR. TROWBRIDGE: Good morning. Chris Trowbridge
11 and Ross Williams here for the Defendant, Paychex, Inc.

12 THE COURT: Okay. All right. Now this case again
13 has been referred to me by Judge Hittner for purposes of
14 entering a Scheduling Order. As I understand it, this case
15 involves some access to some private information or perhaps
16 a breach of confidentiality or alleged breach of
17 confidentiality with regard to some employee information; is
18 that correct?

19 MR. DODSON: Yes, Your Honor, if I could just --

20 THE COURT: Yes.

21 MR. DODSON: -- give you the 10-minute version --

22 THE COURT: All right.

23 MR. DODSON: -- of how I see things?

24 The Plaintiffs are a series of John Deere
25 dealerships in Texas and Louisiana. Paychex is the nation's

1 second biggest provider of payroll services, finance
2 services, benefit services, that sort of thing. They're
3 based in New York.

4 Doggett entered into a contract with Paychex to do
5 their benefits information for them, their payroll, that
6 sort of thing, pretty small contract, a couple of thousand
7 dollars a month.

8 By virtue of that arrangement, Paychex had access
9 to all 1,000 of Doggett's employees' social security
10 numbers, bank account information, direct deposit, that sort
11 of thing.

12 Pursuant to Paychex's policy when members of
13 Doggett's HR Team are termination or leave the company,
14 Doggett sends a notification to Paychex that says, "This
15 person has been terminated or has left the company. Please
16 delete their access to our system."

17 Doggett, one of their HR Managers left the
18 company. Doggett sent a notification to Paychex and said,
19 "Delete this person's access." Paychex replied and said,
20 "We've got your notification. We have deleted that person's
21 access."

22 They did not, in fact, delete that person's
23 access.

24 Four months later, we discovered that all 1,000 of
25 our employee's information had been stolen, using that

1 person's user name and password that Paychex had said they
2 had terminated. We found this out when Paychex's [sic]
3 employees went to file their 2013 tax returns with the IRS
4 and the IRS said, "Sorry, you've already filed a tax return.
5 Your refund has already been given."

6 And so that's what these identity thieves do these
7 days, they file tax returns, credit cards have been applied
8 for, loans have been applied. It was a big, big mess and
9 the mess continues today.

10 So that's where we are factually. I don't think
11 Paychex really disagrees with that, that that's what
12 happened, that that's how the unauthorized access occurred
13 and that's kind of the factual background.

14 Procedurally, Paychex last week filed a Motion to
15 Transfer Venue to the Western District of New York and a
16 Motion to Compel Arbitration. The Motion to Transfer Venue,
17 with all due respect to my colleague, I think barely passes
18 Rule 11 muster. Doggett is based in Texas. Their
19 headquarters are in Texas. The 1,000 people whose
20 identities were stolen are in Texas and Louisiana --

21 THE COURT: All right. Mr. Dodson, I'll remind
22 you, I'm not here to rule on those motions.

23 MR. DODSON: I understand.

24 THE COURT: Those motions were not referred to me,
25 so we don't need to get into the merits of those.

1 MR. DODSON: I understand.

2 THE COURT: I understand your position.

3 MR. DODSON: Okay. And we also recognize, of
4 course, that Motions to Compel Arbitration are granted by
5 this Court and others in the Southern District of Texas
6 often. We think there are differences with our arbitration
7 clause and this situation, so we will have a response, but I
8 just wanted to get that out there.

9 THE COURT: All right. Any Response, Counsel?

10 MR. TROWBRIDGE: I agree who the parties are.

11 (Laughter.)

12 THE COURT: Okay. Well that's something.

13 MR. TROWBRIDGE: So I'll just -- I know you're not
14 hearing these -- the substance of the motions.

15 THE COURT: Right.

16 MR. TROWBRIDGE: I did want to point out, I
17 represent Paychex, Inc. He's also identified Doe
18 Defendants.

19 THE COURT: Right.

20 MR. TROWBRIDGE: He's alleged in the -- the
21 Plaintiffs have alleged in the Complaint that they believe
22 those Does have also worked for Paychex. We filed a Motion
23 to Transfer Venue. We've also filed a Motion to Compel
24 Arbitration. We've agreed at Plaintiff's request to extend
25 their deadline to respond to those till August 1. We've

1 also agreed to not start discovery disclosures, et cetera,
2 until those are resolved.

3 My concern about setting a trial date at this
4 point in time is, one, I think this Court is either going to
5 allow arbitration or transfer venue. And two, even if this
6 Court does not, we have briefing ahead of ourselves and
7 we're certainly not going to get a decision for the next six
8 to eight weeks.

9 So I'd like to have that time to have the Court
10 decide those threshold motions factored into when we are set
11 for trial.

12 THE COURT: Okay.

13 MR. TROWBRIDGE: I also -- because of the Doe
14 Defendants, as we pointed out in our Joint Proposal we
15 submitted yesterday of a plan, we want to give them time to
16 add those Doe Parties as true parties, once those persons
17 are identified and thus, at that point in time, they're
18 going to need discovery. They'll need an opportunity to
19 file motions, et cetera, so I think a July/August setting is
20 particularly aggressive in light of what's ahead of us.

21 THE COURT: All right. Now the other -- tell me
22 about these Does. Who are these? Are these --

23 MR. DODSON: The Does are whoever actually stole
24 the information.

25 THE COURT: Okay.

1 MR. DODSON: We don't know who those people are at
2 this point. We know that they --

3 THE COURT: They're not affiliated with Paychex,
4 as far as you know?

5 MR. DODSON: We know that -- we know that they
6 used the credentials that were supposed to have been
7 terminated. Paychex had access to that, but --

8 THE COURT: They may have been one of your former
9 employees, but you don't know?

10 MR. DODSON: Don't know.

11 THE COURT: Don't know, okay. All right.

12 MR. DODSON: And what I would say to
13 Mr. Trowbridge is that yes, we agree that we should get
14 these motions resolved before we start doing a whole bunch
15 of discovery. I think that that makes good sense.

16 But I don't think that our discovery period needs
17 to be very long, that there's not going to be --

18 THE COURT: Yeah, that's what I was going to ask.

19 MR. DODSON: -- from my perspective that many
20 depositions to take, that much expert discovery. We put in
21 our report that we think after the motions are resolved,
22 whenever that is, we need about six months for discovery.

23 So I would ask the Court to go ahead and enter a
24 trial date. If the decision on the motions slips and takes
25 longer, Judge Hittner moves pretty quickly, as you know, I

1 would be hopefully that we would be able to get a decision
2 on those motions in August and if we get a decision in
3 August and then we do six months of discovery, I think a
4 summer of 2015 trial date is realistic.

5 MR. TROWBRIDGE: And I do not.

6 THE COURT: I understand that. I understand that.

7 Well, what I had anticipated giving as a discovery
8 cutoff would have been next March and that's somewhat
9 consistent, I guess, with if we get an August -- if you get
10 an August decision on those motions.

11 I think probably a better way to handle it and
12 probably the way Judge Hittner prefers, is let's go ahead
13 and get a Scheduling Order in place and if things develop
14 and it appears that more time is necessary, especially in
15 light of the additional Defendants that may be brought in,
16 then we can deal with that at that point, but at least we
17 have a schedule and a framework and we can go forward.

18 But I appreciate your concerns and I'm sure Judge
19 Hittner will take that into account as needs be.

20 So let me go ahead and give you a Scheduling
21 Order, understanding that these may not be final dates, but
22 at least we'll have something in place.

23 With regard to joinder of new parties, we'll set
24 that deadline for -- we'll set that deadline for October the
25 -- October the 1st, 2014.

1 With regard to designation of experts, we'll set
2 the Plaintiff's designation date -- designation date for
3 December the 2nd, with expert reports due within 30 days
4 after that designation date. The Defendants will designate
5 their experts by January the 2nd, 2015, again with expert
6 reports due within 30 days after that date.

7 The deadline for amending pleadings we'll set for
8 November the 3rd.

9 The discovery cutoff, at least for now, we'll set
10 for March the 2nd, 2015.

11 Motion deadline will be April the 1st.

12 Joint Pretrial Order will be due on June the 26th,
13 2015.

14 And the case will be set for trial, at least at
15 this stage, sometime during the months of July/August 2015.

16 Jury demand has been made.

17 And you've estimated, what, about a week to try
18 the case? I'm sure that's probably a pretty good estimate
19 at this time, so we'll estimate a week's jury trial.

20 All right. These are your deadlines,
21 understanding that there may be good grounds to shift these
22 later on.

23 MR. DODSON: Thank you, Your Honor. And just for
24 the Record's sake, while the motions are pending, we should
25 not be doing disclosures?

1 THE COURT: I think that's -- I think basically
2 what you have now is an agreement on the Record that -- I
3 won't include it in the Order but I think because with the
4 parties' agreement, I think it makes sense. And I'm pleased
5 to see the parties cooperating like that. That does make
6 all the sense in the world at this point.

7 MR. DODSON: It's early, but we expect it to
8 continue.

9 THE COURT: Okay. Very good.

10 MR. TROWBRIDGE: One more thing, Judge.

11 THE COURT: Yes, sir.

12 MR. TROWBRIDGE: We did note in the joint
13 submission with the agreement of Plaintiffs that Plaintiffs
14 agreed that Paychex was not waiving any rights with respect
15 to its pending motions by filing the Joint Plan and by
16 appearing here today. I just wanted to put on the Record
17 that we are appearing here today, subject to our motions.

18 THE COURT: Right. I understand. I've noted
19 that.

20 Okay. Thank you for coming in. You may be
21 excused, Counsel.

22 MR. DODSON: Thank you, Your Honor.

23 MR. TROWBRIDGE: Thank you, Your Honor. Nice to
24 see you.

25 THE COURT: All right. Thank you.

1 (Proceeding adjourned at 10:26 a.m.)

2 * * * * *

3 I certify that the foregoing is a correct
4 transcript to the best of my ability from the electronic
5 sound recording of the proceedings in the above-entitled
6 matter.

7 /S/ MARY D. HENRY

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